IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7164 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMPATRAJ M BOTHRA
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 7164 of 2002
MR PARESH M DAVE for Petitioner No. 1
MR DN PATEL, Senior Central Govt. Standing Counsel for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 Rule. Service of rule is waived by Mr.D.N.Patel,

learned Senior Central Govt. Standing Counsel appearing for the respondents. At the request of the learned Advocates appearing for the respective parties, the matter is taken up for final hearing today.

2 The facts giving rise to this petition are very short. The petitioner had filed an appeal before the CEGAT and along with the said appeal, an application for stay had also been filed. The Tribunal had directed the petitioner to deposit a sum of Rs.1 lac within a period of one month from the date of the receipt of the order by the petitioner. The petitioner paid only a sum of Rs.25,000/- within the prescribed period and, therefore, the appeal had been dismissed by an order dated 19.12.2001. Subsequently, the remaining amount of Rs.75,000/- was paid by the petitioner but the said payment was delayed by about 79 days.

3 Being aggrieved by the order of dismissal of the appeal, the petitioner had approached the Tribunal again with a prayer that the appeal be restored but the said application was rejected and, therefore, the petitioner has approached this Court with a prayer that the appeal be restored to file.

4 Mr.Paresh Dave,learned Advocate appearing for the petitioner has admitted the fact that there was a lapse on the part of the petitioner but according to him, on account of financial difficulties, the petitioner could not deposit the amount within the time prescribed. Moreover, according to him, through oversight, the petitioner did not ask for further extension. At an earlier point of time a request for extension was made and the said request was also granted by the Tribunal.

5 It has been submitted by the learned Advocate for the petitioner that if the appeal is not restored to file, substantial right of filing an appeal would be lost by the petitioner and the petitioner would be put to great difficulty. It has been submitted by him that this Court has, in case of S.T.Texturisers & Another Vs. Union of India & Others, 2000(39)RLT 1 (Guj.), has held that a right to file an appeal is a substantial right and if the amount is not deposited within the time prescribed by the appellate authority, the appellate authority should not dismiss the appeal if ultimately the amount of pre-deposit is deposited and a justifiable reason for late deposit of the amount is given by the appellant.

5 On the other hand,Mr.D.N.Patel, learned Senior Central Govt. Standing Counsel has submitted that the

appeal has already been dismissed. If the petitioner was not conscious about his right and if he did not make the payment as directed by the appellate authority within the time prescribed,the petitioner cannot make any grievance, if the appeal is dismissed. According to him, the appeal had been rightly rejected by the Tribunal.

6 We have heard the learned Counsel appearing for the respective parties and have also considered the judgment reported in the case of S.T.Texturisers & Another (supra). Looking to the law laid down by this Court in the said decision and more particularly when it is an admitted fact that the petitioner has a right to file an appeal and the petitioner has been deprived of the said right on account of the delay caused in depositing the amount, in our opinion, the petitioner should be asked to compensate the State authorities if any order in favour of the petitioner is to be passed. In our opinion, the ends of justice would be served if the petitioner is asked to pay interest on the delayed payment as well as costs of the petition.

7 In our opinion, in all a sum of Rs.10,000/should be paid by the petitioner to the department by way of interest as well as costs within a period of four weeks from today. Upon the evidence being adduced with regard to payment of the said amount, the Tribunal shall restore the appeal to file and decide the same in accordance with law.

7. In the result, the petition is allowed. The impugned order dated 19.12.2001 dismissing the appeal is quashed and set aside. Rule made absolute to the aforesaid extent.

Sd/- Sd/-

(A.R.Dave,J.) (D.A.Mehta, J)

m.m.bhatt